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Lord & Taylor LLC

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

TIANHAI LACE USA, INC.,

Plaintiff(s),

vs.

LORD & TAYLOR LLC, a Delaware
corporation, G-III Apparel Group, Ltd. d/b/a Eliza
J, a Delaware corporation, and DOES 1-10

Defendant(s).

Case No.: 1:18-cv-6616

ANSWER TO COMPLAINT

JURY TRIAL DEMANDED

ANSWER TO COMPLAINT

Defendant Lord & Taylor LLC (“Defendant” or “Lord and Taylor”), by and through its undersigned attorneys, hereby answers the Complaint against it by Plaintiff Tianhai Lace USA, Inc. (“Plaintiff” or “Tianhai”) as follows:

NATURE OF THIS ACTION

To the extent a response is required to the allegations set forth in this introductory paragraph, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

THE PARTIES

1. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

2. Deny. Defendant is a limited liability company organized under the laws of Delaware with offices at 225 Liberty Street, 31st Floor, New York, NY 10281.

3. Admitted.

4. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

5. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

6. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

JURISDICTION AND VENUE

7. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required.

8. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required.

9. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. To the extent that this paragraph of the Complaint contains factual allegations to which a response is required, Defendant denies the allegations as to Defendant Lord & Taylor LLC. Defendant lacks information sufficient to form a belief as to the facts alleged with respect to the remaining defendants and, on that basis, Defendant denies them.

10. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. To the extent that this paragraph of the Complaint contains

factual allegations to which a response is required, Defendant denies the allegations as to Defendant Lord & Taylor LLC. Defendant lacks information sufficient to form a belief as to the facts alleged with respect to the remaining defendants and, on that basis, Defendant denies them.

FACTS COMMON TO ALL COUNTS

Tianhai's Copyrighted Lace Designs

11. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

12. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

13. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

14. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

15. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

16. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

a. The Y0729 Pattern

17. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. As to the remaining factual allegations, Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

18. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. As to the remaining factual allegations, Defendant lacks

information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

19. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. Defendant denies that Tianhai Lace USA, Inc. owns all right, title and interest in Pattern Y0729 necessary to independently bring the instant action. As to the remaining factual allegations in this paragraph of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

20. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. Defendant denies that Tianhai Lace USA, Inc. has secured all of the rights and privileges in and to the Pattern Y0729 design (as well as the copyright therein) necessary to independently bring the instant action. As to the remaining factual allegations in this paragraph of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

21. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. Defendant denies that Tianhai Lace USA, Inc. is the sole owner of U.S. Copyright Registration No. VA 1-967-084 for the Pattern Y0729 design. As to the remaining factual allegations in this paragraph of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

22. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. As to the factual allegations in this paragraph of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

23. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. Defendant denies that Tianhai Lace USA, Inc. has been, and still is, the exclusive holder of all rights, title, and interest in and to the copyright in the Pattern Y0729 design. As to the remaining factual allegations in this paragraph of the Complaint,

Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

Defendants' Infringing Activities

24. Admitted.

25. Admitted.

26. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

27. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

28. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

29. Denied.

30. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

31. Defendant admits that garments with style number EJ5W9239 were supplied to Lord & Taylor. Defendant lacks information sufficient to form a belief as to any remaining facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

32. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

33. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

34. Denied.

35. Denied.

Tianhai's Enforcement Activities

36. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

37. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

38. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. Defendant admits that Defendant's General Counsel received a letter from counsel purporting to represent Tianhai on or around September 22, 2015. Defendant lacks information sufficient to form a belief as to the remaining facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

39. Denied.

40. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. As to the factual allegations in this paragraph of the Complaint, Defendant denies them.

41. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

42. Defendant denies the allegations as to Defendant Lord & Taylor LLC. Defendant lacks information sufficient to form a belief as to the remaining facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

43. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. As to the factual allegations in this paragraph of the Complaint, Defendant denies them.

44. Denied.

45. Denied.

First Claim for Relief
Copyright Infringement under 17 U.S.C. § 101 et seq.

46. Defendant repeats and realleges by reference each of its responses to each and every allegation in the paragraphs above.

47. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

48. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. Defendant denies that Tianhai Lace USA, Inc. has been, and still is, the owner of all rights, title, and interest in and to the copyright in the Pattern Y0729 design, including the copyrights therein. As to the remaining factual allegations in this paragraph of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

Second Claim for Relief
Unfair Competition under New York State Common Law

56. Defendant repeats and realleges by reference each of its responses to each and every allegation in the paragraphs above.

57. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

58. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

59. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

60. The allegations in this paragraph of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, denied.

61. Defendant lacks information sufficient to form a belief as to the facts alleged in this paragraph of the Complaint, and on that basis, Defendant denies them.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

PRAYER FOR RELIEF

The allegations in this prayer for relief state legal conclusions to which no response is required. To the extent a response is required, denied.

GENERAL DENIAL

Defendant denies each and every allegation contained in the Complaint that is not hereinabove expressly admitted and Defendant further denies that Plaintiff is entitled to any relief or recovery whatsoever from Defendant in this case.

JURY TRIAL DEMANDED

Defendant demands a jury trial for all issues so triable.

AFFIRMATIVE AND OTHER DEFENSES

Without admitting any of the allegations of the Complaint and without admitting or suggesting that Defendant bears the burden of proof on any of the following issues, as separate and independent defenses and/or affirmative defenses, Defendant states as follows:

FIRST AFFIRMATIVE DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. The Complaint fails to name Tianhai Lace Co. Ltd. and Tianhai Lace (Guangdong) Ltd. as parties, both of whom are indispensable parties to this proceeding.

THIRD AFFIRMATIVE DEFENSE

3. The Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, implied license, unclean hands, and/or laches.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs cannot recover as Plaintiffs heretofore waived, licensed, abandoned or forfeited any rights previously held under the Copyright Act, surrendered by operation of law.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff is not entitled to equitable relief, as it has misused its copyrights and wrongfully attempted to extend the scope of the limited monopoly granted by the Copyright Act.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff is not entitled to equitable relief, as it is guilty of conduct directly related to the merits of the controversy between the parties, sufficient to affect the equitable relations between the parties, and sufficient to invoke the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiff is not entitled to equitable relief, as the copyright registration, and the underlying copyright, asserted by Plaintiff is invalid, improper, and unenforceable.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff's unfair competition claim under New York State common law is preempted by 17 U.S.C. § 301(a).

RESERVATION OF RIGHTS

9. The foregoing affirmative and other defenses are raised by Defendant without waiver of any other defenses that may be available or determined after discovery and investigation is undertaken. Defendant gives notice that it intends to rely upon any defenses available, and reserves the right to assert any other additional defenses that may become available or apparent at any time during the pendency of these proceedings.

WHEREFORE, Defendant requests entry of judgment dismissing the Complaint and all claims with prejudice, that Defendant be reimbursed for their costs and attorneys' fees incurred in responding to the Complaint, and asks that the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,

DATED: December 10, 2018

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